

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/674,767 Confirmation No.: 5481  
Applicant : Dean DellaPenna  
Filed : September 30, 2003  
Group Art Unit.: 1638  
Examiner : Russell Kallis  
For : Transgenic Plants With Tocopherol Methyltransferase  
Docket No. : 87-07A  
Customer No. : 23713

**CERTIFICATE OF EFS-WEB FILING**

I hereby certify that this correspondence is being filed with the USPTO EFS-WEB system.

April 21, 2008  
Date

/laurasedlacek/  
Laura Sedlacek

Mail Stop  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT AND  
WITHDRAWAL OF OFFICE ACTION OF AUGUST 6, 2007**

Sir:

In response to the Notice of Abandonment issued March 21, 2008 which states that the application was deemed abandoned for failure to respond to the Office Action of June 22, 2008, and in response to the Notice of Non-Compliant Amendment issued August 6, 2007, Applicants state as follows:

In telephone interviews with the Examiner conducted on January 28 2007 and February 6, 2008, made of record herein by Applicants on February 22, 2008, the Office's failure to change the correspondence address for this case as previously requested was discussed, and the Examiner indicated he would withdraw the Office Action of August 6, 2007 and reissue it after the correspondence address had been changed by the PTO.

The facts surrounding the abandonment are as follows:

This application was transferred to the undersigned firm in December of 2006. The undersigned responded to an Office Action herein on May 29, 2007. With that response a showing of ownership under 37 CFR 3.73(b) was also filed.

On June 14, 2007, the undersigned filed a Revocation of Power of Attorney and New Power of Attorney and Change of Correspondence Address requesting that this firm be recognized and that the correspondence address be changed to this firm's address.

The correspondence address was not changed in the PTO, and instead, on June 22, 2007 a Notice Regarding Power of Attorney was issued and mailed to the previous law firm stating that the Certificate under 37 CFR 3.73(b) had not been received. Presumably, this is the Office Action referred to in the Notice of Abandonment as not having been responded to.

However, on July 2, 2007, the undersigned filed a Response to Notice Regarding Power of Attorney issued on June 22, 2007 advising the Office that the Certificate under 37 CFR 3.73(b) had been filed on May 29, 2007, and again requested recognition of this firm and change of the correspondence address. Apparently, although the case file in this office indicates the July 2, 2007 Response was properly signed, the electronic record does not reflect that the Response was signed. A copy of the July 2, 2007 submission in the case file kept in this firm is submitted herewith.

In any event, in cases where a Response is not signed by a patent attorney or agent, MPEP Section 714.01(a), entitled, "Unsigned or Improperly Signed Amendment," states:

The examiner will notify applicant of the status of the application, advising him or her to furnish a duplicate amendment properly signed or to ratify the amendment already filed. In an application not under final rejection, applicant should be given a 1-month time period in which to ratify the previously filed amendment (37 CFR 1.135(c)). [Emphasis in original.]

The undersigned firm was not notified of the failure to sign the July 2, 2007 as required by the MPEP, and therefore, failure to sign the Response cannot be a proper reason for abandonment.

The Notice of Abandonment states that there are three “other reasons for holding abandonment.”

First, it states that the person who signed the Power of Attorney filed June 14, 2007 did not provide her title or note that she was authorized to sign. A new Power of Attorney on which the signator, Daniel J. Klaich indicated his title as Executive Vice Chancellor and confirmed that he is authorized by the University and Community College System of Nevada to sign the application on their behalf, along with a new Certificate under 37 CFR 3.73(b) was filed on April 18, 2008. However, Applicants were never advised of this purported defect in the Power of Attorney and request for change of correspondence address previously filed, and thus had no reason to believe that the Power of Attorney and request for change of correspondence address that was previously filed was defective. Thus, the defect in the Power of Attorney that the signator’s title and authority to sign was not indicated in the submitted Power of Attorney cannot properly be used as a basis for abandonment of the application.

Second, the Notice of Abandonment states that the letter of July 2, 2007 was unsigned. However, even if by an oversight, an unsigned copy of the letter of July 2, 2007 (which constituted the response to the June 22, 2007 Office Action) was

electronically filed with the PTO, it is submitted that this letter was informational only, and that the unsigned letter was sufficient to apprise the Patent Office that the Statement under 37 CFR 3.73(b) had previously been filed and was of record in the case. Also, as stated above, the Office should have notified this firm that the Response had not been signed and provided an opportunity to correct the defect. Thus, any failure to sign the Response of July 2, 2007 cannot properly be a reason for abandonment.

Third, the Notice of Abandonment further states that "best practice" is to include the 3.73(b) Notice with the Power of Attorney document, even though this is not required. Since it is not required to file a 3.73(b) notice with the Power of Attorney document, this also cannot properly be a reason for abandonment.

Therefore, withdrawal of the Office Action of August 6, 2007 and withdrawal of the Notice of Abandonment is respectfully requested. It is understood that the Office Action of August 6, 2007 will be re-issued and applicants will be given an opportunity to respond.

It is believed no fee is due with this submission; however, if this is incorrect, please charge the required fee and any fee due for extensions of time required to Deposit Account 07-1969.

Respectfully submitted,

/ellenwinner/

Ellen P. Winner  
Reg. No. 28,547.

GREENLEE, WINNER AND SULLIVAN, P.C.  
4875 Pearl East Circle, Suite 200  
Boulder, CO 80301  
Telephone (303) 499-8080  
Facsimile: (303) 499-8089  
Email: [usptomail@greenwin.com](mailto:usptomail@greenwin.com)  
Attorney Docket No.: 87-07A